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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

KEVIN SMITH, individually and on behalf of all others similarly situated,

Plaintiff,

V.

FLUIDMASTER, INC.,

Defendant.

No. 8:15-cv-2173

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Kevin Smith (“Plaintiff”), individually and on behalf of all others
2 similarly situated, brings this action against Defendant Fluidmaster, Inc.
3 (“Fluidmaster” or “Defendant”). In support thereof, Plaintiff alleges as follows based
4 upon personal knowledge as to his own conduct and on information and belief as to
5 the acts of others.

6

7 **I. NATURE OF THE ACTION**

8

9 1. Defendant, Fluidmaster, which claims to be the world’s leader in toilet
10 and plumbing repair products, designed, manufactured, and marketed water supply
11 lines (“water supply lines” or “supply lines”) for use with common household fixtures
12 including faucets, toilets, and dishwashers. These water supply lines contain certain
13 latent defects that make them unfit for their intended purpose.

14 2. Fluidmaster designed, manufactured, and distributed supply lines known
15 as Fluidmaster NO-BURST® braided stainless steel supply lines (hereinafter, the
16 “NO-BURST Lines” or the “NO-BURST water supply lines”). As evidenced by the
17 name of its product, Fluidmaster pursued an aggressive branding and marketing
18 strategy with respect to its NO-BURST water supply lines, stating that they are of high
19 quality, built with superior materials, and only sold after rigorous testing.
20 Specifically, Fluidmaster advertises its NO-BURST water supply lines as “tough,”
21 “heavy-duty,” “reinforced,” chlorine resistant, designed for “high flow capacity,” and
22 having “high bursting strength.”

23 3. Notwithstanding the name of the product, because of poor material
24

1 selection and a defective design, Fluidmaster's NO-BURST Lines routinely rupture
2 and burst. These NO-BURST water supply lines burst because Fluidmaster uses an
3 inferior grade of stainless steel that is susceptible to corrosion from everyday
4 household cleaners that are expected to be used and stored in close proximity to the
5 water supply lines. Fluidmaster used inadequate low-pressure flexible rubber tubing
6 that easily bursts if the stainless steel braiding intended to protect the tubing corrodes
7 from ordinary exposure to water, air, and household products.

8
9
10 4. Upon information and belief, in an attempt to correct the design defect
11 alleged herein, Fluidmaster changed the design of its NO-BURST Lines in or around
12 2003 to include higher pressure-rated inner water-carrying tubing such that if the
13 support from the exterior stainless steel braiding was lost, the supply line would not
14 rupture, or would not rupture as easily. NO-BURST Lines using defective materials,
15 however, are still being sold and installed in residential and commercial buildings
16 across the country.

17
18 5. The defects associated with Fluidmaster NO-BURST water supply lines
19 are so severe that these water supply lines must be removed and discarded sooner than
20 reasonably expected.

21
22 6. Plaintiff and the Class have suffered damages including the loss of the
23 benefit of the bargain, in that they paid for a product that was worth less than what
24 was represented by Fluidmaster, and Plaintiff and the Class members would not have
25 purchased the water supply lines, or continued to use the water supply lines, had they
26
27
28

1 known of the defects at the time of sale.

2 7. Plaintiff and the Class have suffered harm as a result of Fluidmaster's
3 actions because their water supply lines contained design defects that caused the water
4 supply lines to rupture and burst, causing harm not only to the water supply lines, but
5 also to other real and personal property. In addition, because of the flooding that
6 actually has or will occur due to the defects described herein, there is a serious risk of
7 harm in the event the flooding takes place in areas where electrical outlets, appliances,
8 and related household items could cause electrocution to anyone who may come into
9 contact with or near those items as water is an electrical conductor.

10 8. Plaintiff seeks to recover, for himself and the Class, all costs associated
11 with repairing, removing and/or replacing the water supply lines, as well as the costs
12 of repairing any damage to property caused by the failure of the water supply lines to
13 perform as represented and warranted. Plaintiff also seeks injunctive relief requiring
14 Fluidmaster to modify its unfair and fraudulent practices so as to uniformly provide
15 relief in accordance with its obligations under the law.

16 9. The issues regarding the design defects associated with Fluidmaster's
17 water supply lines are common to all members of the putative Class. There is an
18 economy to class treatment of these issues because resolution has the potential to
19 eliminate the need for repeated litigation related to the defects in Fluidmaster's water
20 supply lines and the reasons for their repeated failure.

II. PARTIES

A. Plaintiff

10. Plaintiff Kevin Smith is a citizen of the state of California who resides in Studio City, California.

11. Mr. Smith had a NO-BURST Line installed in his home that was connected to a faucet in an upstairs bathroom.

12. On July 11, 2014, Mr. Smith's daughter entered the home and discovered water flooding into a bathroom and hallway near the kitchen. She notified Mr. Smith, who, at the time, was eating dinner with his family in their backyard. Mr. Smith determined that the source of the water was the upstairs bathroom and, after turning off the water supply to the bathroom faucet, observed a hole in his NO-BURST Line.

13. A picture of Mr. Smith's NO-BURST Line can be seen below:



14. Mr. Smith retained a professional to assess the damage to his home from the flooding caused by the ruptured NO-BURST Line. He received a repair estimate

1 for approximately \$5,000 for work recommended by the professional, including
2 opening the ceiling between the walls in order to ensure and verify that the water
3 between the floors had properly dried and repairing holes and repainting. Mr. Smith
4 opted to forego repairing certain damage to his home, and instead retained
5 professionals to dry his home using fans, evaporators and heaters. Mr. Smith's out-of-
6 pocket expenses were approximately \$2,500.
7
8

9 15. Mr. Smith telephoned Fluidmaster technical support and informed them
10 of the failure of his NO-BURST Line. His call was then transferred to another
11 employee that Mr. Smith understood handled claims. Mr. Smith reached her
12 voicemail and her greeting indicated that she was in the risk department. Mr. Smith
13 left a voicemail message, but his call was never returned by any Fluidmaster
14 employee.
15
16

17 16. Mr. Smith would have removed the NO-BURST Line from his home, and
18 would not have exposed his real and personal property to flooding and himself and his
19 family to safety risks, had Fluidmaster disclosed the propensity for the NO-BURST
20 Line to spontaneously rupture and fail.
21
22

B. Defendant

23 17. Defendant Fluidmaster, Inc. ("Defendant" or "Fluidmaster") is a
24 California corporation with its corporate headquarters and principal place of business
25 located at 30800 Rancho Viejo Road, San Juan Capistrano, California 92675.
26 Fluidmaster conducts substantial business in California and throughout the United
27
28

1 States, including the sale and distribution of its water supply lines, which can be
2 purchased at stores such as Home Depot, Lowe's, Menards, TrueValue, Walmart, and
3 Ace Hardware.
4

5 **III. JURISDICTION AND VENUE**

6 18. This Court has jurisdiction over this class action pursuant to 28 U.S.C.
7 §1332(d), as the amount in controversy exceeds \$5,000,000, exclusive of interest and
8 costs, and at least one member of the proposed Class is a citizen of a state different
9 from Fluidmaster.

10 19. The requirement of minimal diversity is met as the dispute is between
11 citizens of different states within the meaning of 28 U.S.C. §§ 1332(d).

12 20. Plaintiff Smith is a citizen of California, and Defendant Fluidmaster is a
13 citizen of California.

14 21. Venue is proper in this District pursuant to 28 U.S.C. § 1391, *et seq.*
15 because a substantial part of the events or omissions giving rise to the claim occurred
16 in this District. Additionally, Defendant Fluidmaster regularly conducts substantial
17 business in California, including the sale and distribution of its water supply lines.

18 **IV. SUBSTANTIVE ALLEGATIONS**

19 22. Fluidmaster, from its California headquarters, conducts business
20 throughout the United States, and designed, manufactured, assembled, tested, labeled,
21 marketed, advertised, and offered for distribution and sale defective water supply lines
22 with the specific purpose that they be installed by builders, plumbers and consumers in
23

1 homes and other buildings throughout the United States. The water supply lines were
2 designed and introduced as a safe and superior alternative to rigid metal pipes with
3 shutoff valves. The water supply lines were lauded as a safe product, of merchantable
4 quality, and fit for their intended and reasonably foreseeable uses.

5 23. Water supply lines are used to transport water from a supply pipe to a
6 plumbing fixture (*e.g.*, a toilet, faucet, dishwasher, *etc.*). The lines primarily consist of
7 three parts: the inner flexible tubing, the outer braided steel wire designed to protect
8 the tubing, and the coupling nuts that connect the lines to adjacent plumbing fixtures.
9 Because they can be installed in tight spaces, water supply lines have found
10 widespread application in residential and commercial plumbing.

11 24. Fluidmaster, however, knowingly failed to disclose that its water supply
12 lines were subject to a serious design defect, were unsafe, and posed a substantial risk
13 of failure, in that they would burst, resulting in flooding and damaging building
14 owners' real and personal property. Even after their water supply lines began failing,
15 Fluidmaster failed to notify consumers of the defects.

16 25. In recent years, losses due to water leaks, flooding, and mold damage
17 caused by faulty and defective supply lines have risen. Because the water being
18 transported is under pressure, deterioration of the stainless steel braiding due to
19 corrosion can cause the supply lines to become brittle and burst, even under normal
20 pressure conditions and absent any faulty installation and/or misuse by the consumer.

A. Fluidmaster's Claims Regarding Product Quality

26. On Fluidmaster's website, visitors find a picture of the Company's founder, Adolf Schoepe, who the website claims changed the plumbing industry in 1957 when he invented the Fluidmaster toilet fill valve.¹ Visitors also find a number of claims regarding the allegedly high-quality materials that Fluidmaster products are made from and the allegedly long, useful, lifespan customers can expect from them:

Why do Fluidmaster parts last so long? Superior engineering and top-grade materials. We keep that spirit of invention alive by always looking (and finding) new ways to make our repair parts work better and last longer.

<http://www.fluidmaster.com/history>

27. Fluidmaster describes how its toilet valves (the Company's flagship product) are subjected to rigorous testing, including tests meant to simulate exposure to water with extreme pH or chlorine levels:

Fluidmaster's team of engineers oversees a rigorous product testing program, exposing valves to conditions that greatly exceed typical household circumstances. Up to 20 valves cycle 24-hours a day in the Engineering Lab, sometimes flushing water that is altered to simulate the extreme pH or chlorine levels that exist in other regions. To maintain a competitive stance, Fluidmaster also regularly tests valves from other manufacturers, using the same demanding protocol.

<http://fluidmasterpro.com/history>

28. Fluidmaster describes how “[t]he popularity of [its] valves has created a perfect springboard for Fluidmaster’s expansion into related product lines,” such as

¹ <http://www.fluidmaster.com/history>

1 braided stainless steel connectors/supply lines, explaining in detail:

2 In addition to the inaugural fill valve, Fluidmaster's
3 complete line of toilet repair parts includes flush valves,
4 flappers, tank levers, dual flush valves, bowl wax, toilet
5 repair kits, ballcocks and connectors. Fluidmaster's growing
6 global distribution network reaches more than 80% of the
7 world's population and spans over 87 countries. With
8 manufacturing facilities across the globe, Fluidmaster is
9 quick to market, quick to manufacture and *quick to deliver*
10 with *unparalleled quality assurance*.

11 (Emphasis added).²

12 29. To reassure consumers of the outstanding quality of their products,
13 Fluidmaster's marketing materials emphasize their vast market share, which has
14 resulted from providing the "highest quality" products:

15 Fluidmaster is the #1 selling brand of toilet repair products
16 in the world. In fact, our products are found in more toilets
17 than all other brands combined. For more than 50 years,
18 Fluidmaster has been at the forefront of the toilet care
19 market by providing innovative yet easy-to-use products
20 that are of the highest quality.

21 30. Fluidmaster's marketing is clear and unambiguous -- consumers can
22 depend on the Company's products, including its water supply lines, because they are
23 "of the highest quality," they are made of superior materials, and their products are
24 rigorously tested before finding their way into homes across the world.

25 **B. Fluidmaster's Water Supply Lines**

26 31. Fluidmaster manufactures numerous water supply lines that are the

27

28 ² <http://fluidmasterpro.com/history/>

1 subject of this lawsuit, including a line of braided stainless steel supply lines under the
 2 registered trademark “NO-BURST.”
 3

4 32. Fluidmaster began using the “NO-BURST” designation in the 1980s and
 5 registered the trademark in 1989.
 6

7 33. Fluidmaster’s NO-BURST Lines typically retail for between \$2.00 to
 8 \$20.00, depending on the length of the line and the type of fixture. The specific line
 9 of products that are the subject of this lawsuit is set forth below:
 10

Name	Lengths Available
NO-BURST® Braided Stainless Steel Fluidmaster Supply and Toilet Supply Lines	6”, 9”, 12”, 16” and 20”
NO-BURST® Braided Stainless Steel Fluidmaster Supply Lines (with re-enforced vinyl)	6”, 9”, 12”, 16” and 20”
NO-BURST® Braided Stainless Steel Faucet Connectors	9”, 12”, 16”, 20”, 30” and 36”
NO-BURST® Braided Stainless Steel Dishwasher Connectors	48”
NO-BURST® Braided Stainless Steel Ice Maker Connectors	12”, 60”, 72” 84”, 96”, and 120”
NO-BURST® Braided Stainless Steel Washing Machine Connectors	48”, 60” and 72”

Name	Lengths Available
NO-BURST® Braided Stainless Steel Water Heater Connectors	12", 18" and 24"



34. Fluidmaster's NO-BURST Lines are easily identifiable, as the Company's name and the part number are stamped or etched onto the crimp sleeve located at the end of the line. For example, a line might be stamped "#FLUIDMASTER USA W222#."

35. Fluidmaster advertises its NO-BURST Lines as "tough," "heavy-duty," "NSF-approved," "reinforced," chlorine resistant, designed for "high flow capacity," and having "high bursting strength."

36. For example, Fluidmaster's NO-BURST Lines are described as follows on its website:

NO-BURST®

Braided Stainless Steel Fluidmaster Supply Lines

High bursting strength. Each foot of No-BURST® connectors contains 220 feet of stainless steel wire. Stainless ferrules are extra-long with double radial crimps for more security. Tough, NSF-approved, re-enforced polymer core resists chlorine and chloramines. Ample inside diameter for high flow capacity. Captive cone washes seal tightly.

Exceptional flexibility for fast, easy installation. Won't kink or crease, even in the tightest of spaces. Heavy-duty brass nuts are durable and easy to grip.

Exceeds all requirements for flexible water connectors.

37. On its website, Fluidmaster also provides a series of “Appliance Maintenance Tips.” Fluidmaster instructs consumers to inspect water supply connectors annually and “[r]eplace if bulging or unable to straighten out any kinks.” For best results, consumers are told to “replace with a braided, flexible stainless steel connector such as NO-BURST®.”

38. Fluidmaster does not instruct its customers to inspect their NO-BURST Lines for signs of corrosion or warn them of the water supply lines' susceptibility to corrosion, rupture and bursting.

C. Fluidmaster's Warranty

39. Fluidmaster provides a five-year -- or, in some cases, depending on the date of manufacture, a ten-year -- limited express warranty on each of its water supply

1 lines.³ Pursuant to the standard warranty, Fluidmaster promises to repair or replace
2 “any part which proves to be defective in workmanship or materials” under normal use
3 for five (5) years from the date of purchase.
4

5 40. The warranty is made subject to the following “Exclusions”:

6 FLUIDMASTER SHALL NOT BE LIABLE FOR
7 INCIDENTAL OR CONSEQUENTIAL DAMAGES,
8 INCLUDING COSTS OF INSTALLATION, WATER
9 DAMAGE, PERSONAL INJURY OR FOR ANY
10 DAMAGES RESULTING FROM ABUSE OR MISUSE
11 OF THE PRODUCT, FROM OVERTIGHTENING OR
12 FROM FAILURE TO INSTALL OR MAINTAIN THIS
13 PLUMBING PRODUCT IN ACCORDANCE WITH THE
14 WRITTEN INSTRUCTIONS. DO NOT USE IN-TANK
15 DROP-IN TOILET BOWL CLEANERS CONTAINING
16 BLEACH OR CHLORINE. USE OF SUCH PRODUCTS
WILL RESULT IN DAMAGE TO TANK COMPONENTS
AND MAY CAUSE FLOODING AND PROPERTY
DAMAGE. USE OF SUCH PRODUCTS WILL VOID
THIS WARRANTY.

17 **D. Fluidmaster’s NO-BURST Lines Are Defective**

18 41. At all times relevant to this Complaint, and prior to Plaintiff’s and the
19 Class members’ purchases of their NO-BURST water supply lines, Fluidmaster was
20 aware that the supply lines contained an inherent design defect that caused them to
21 burst, rupture, leak, and fail, and that the defect was present at the point of sale.
22

23 42. Fluidmaster knew, or but for its reckless indifference should have known,
24 that it was receiving and was going to continue to receive reports of burst and broken
25 NO-BURST Lines.
26

27 28 ³ <http://www.fluidmaster.com/warranty>

1 43. Despite its knowledge, Fluidmaster did not disclose to its customers or
2 prospective purchasers that there was a substantial risk that its NO-BURST Lines
3 would manifest the defect (rupture and bursting of the inner tubing on the lines after
4 corrosion of the stainless steel braiding).

5 44. Consumers who purchased the NO-BURST water supply lines had no
6 way of knowing that the lines were defective at the point of sale.

7 45. Fluidmaster's NO-BURST Lines are defective because they do exactly
8 what they are not supposed to do: they burst. The defect is a design flaw stemming
9 from Fluidmaster's use of substandard materials.

10 46. Specifically, Fluidmaster uses a grade of stainless steel that is known to
11 corrode and fracture in the presence of low levels of bleach or chlorine, chemicals that
12 are present in common household cleaners that are reasonably and foreseeably used
13 and stored near NO-BURST Lines.

14 47. Additionally, Fluidmaster used a low pressure-rated water-carrying inner
15 tubing that herniates and ruptures if support from the exterior stainless steel braiding is
16 lost.

17 48. NO-BURST Lines using defective materials, however, are still being sold
18 and installed in residential and commercial buildings across the country.

19 49. Although a layperson might believe that stainless steel cannot corrode,
20 this is inaccurate. When stainless steel is exposed to oxygen, a microscopic layer of
21 corrosion forms almost immediately over its entire surface, sealing the steel from
22

1 further oxidation and stopping further corrosion. If stainless steel is scratched or
2 scraped, the protective layer is lost, but will reform again to “heal” the exposed area.
3

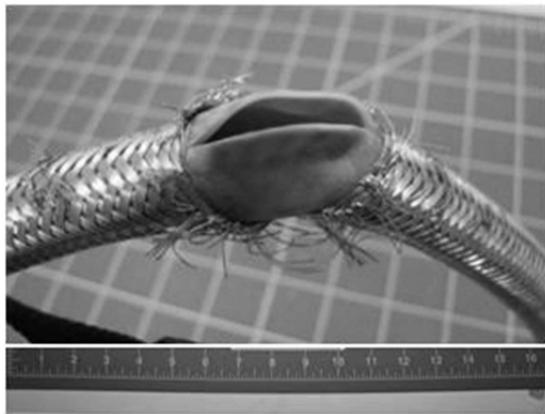
4 50. The braided stainless steel covering a supply line pulsates and moves
5 with changes in water pressure and as a result of a phenomenon known as water
6 hammer, which occurs when flowing water is forced to stop or change direction
7 suddenly, as when a valve is closed at the end of a pipeline system, causing a
8 knocking sound. This movement causes the braid’s wires to rub against one another,
9 and the protective coating of corrosion on the surface of the stainless steel is lost and
10 reformed over and over again.
11

12 51. Unlike solid rubber or copper tubing, the braided nature of the surface
13 stainless steel supply lines allows them to capture water. The water and any chemical
14 it contains seeps through the braid and is trapped between the braid and the inner
15 flexible tubing. If the water contains chlorides found in common household cleaners,
16 the corrosion that happens as the braid moves is accelerated. This process, which will
17 eventually cause the braiding to fail and the line to burst, is known as chloride stress
18 corrosion.
19

20 52. Under normal and foreseeable conditions, the outer stainless steel shell of
21 Fluidmaster’s NO-BURST Lines deteriorates, making it thin and brittle, causing the
22 braiding to separate, exposing the inner flexible tubing, and causing it to lose strength.
23

24 53. When this happens, normal water pressure allows the low-pressure tubing
25 to herniate until it ruptures, resulting in an uncontrolled release of water. Pictures of
26

1 ruptured lines are set forth below:



10 54. Chloride stress corrosion is a well-known and generally accepted
11 phenomenon by the scientific community and in the plumbing industry. Fluidmaster
12 knew or was reckless in not knowing that by selecting an inferior grade of stainless
13 steel, combined with low-pressure inner rubber tubing, it was creating a product
14 designed to fail. These defects were present at the time of manufacture and point of
15 sale to Plaintiff and the Class, who did not have knowledge of the defects.

16 55. Upon information and belief, in an attempt to correct the design defect
17 alleged herein, in or around 2003 Fluidmaster changed the design of its NO-BURST
18 Lines to incorporate inner tubing with a higher pressure rating. Upon information and
19 belief, Fluidmaster strengthened the water-carrying inner tubing to reduce or delay the
20 bursting of the tubing should the exterior stainless steel braiding support be lost to
21 corrosion.

22 **E. Plaintiff and the Class Suffered Damages**

23 56. Plaintiff and the Class have suffered harm as a result of Fluidmaster's

1 actions because their water supply lines contained material design defects which
 2 caused the water supply lines to rupture and burst, causing harm not only to the water
 3 supply lines, but also to other real and personal property. In addition, because of the
 4 flooding that actually has occurred or will occur due to the defects described herein,
 5 there is a serious risk of harm in the event the flooding takes place in areas where
 6 electrical outlets, appliances, and related household items could cause electrocution to
 7 anyone who may come into contact with or near those items as water is an electrical
 8 conductor.

11 57. Plaintiff and the Class had a reasonable expectation that the service life of
 12 the water supply lines was at least 15 years (in fact, a competitor named Floodchek
 13 has a 20-year warranty on water supply lines such as the ones sold by Fluidmaster in
 14 this case),⁴ which would equate to the same useful life as the plumbing component
 15 (*e.g.*, toilet) to which it was affixed.

18 58. The water supply lines' design defects, however, caused Plaintiff's and
 19 the Class members' water supply lines to experience premature failure that is
 20 disproportionate to the age of the component or to the age of the plumbing fixture
 21 (*e.g.*, toilet, faucet, etc.).

24 59. The injuries sustained by Plaintiff and the Class flow directly from the
 25 core common facts surrounding Fluidmaster's misconduct, including, without
 26 limitation: (a) that the water supply lines suffered from design defects which were

27 28 ⁴ <http://www.floodchek.com/resources/braided-wire-washer-hose.html>

1 known to Fluidmaster that led the lines to rupture and burst; (b) that the water supply
2 lines were defective for their intended use at the time of sale; (c) that Fluidmaster did
3 not provide adequate warnings concerning the defective nature of the water supply
4 lines; and (d) that Fluidmaster, despite knowing of the design defects, failed to provide
5 any public notice or warning, or institute a recall to repair or replace the defective
6 water supply lines.

9 60. Plaintiff's and Class members' damages include, without limitation: (a)
10 amounts paid for the defective water supply lines; (b) amounts paid to remediate real
11 and personal property damage caused by flooding after the failure of a Fluidmaster
12 supply line; (c) amounts paid to replace the defective water supply lines; and (d)
13 expenses incurred on incidental and consequential damages. Plaintiff and the Class
14 also lost the benefit of the bargain with respect to their purchase of the water supply
15 lines in that they would not have purchased them if they had known of the defects that
16 existed at the point of sale, or they would not have paid the price they paid, wrongly
17 believing that the water supply lines were not defective. In addition, there is a serious
18 risk of harm to Plaintiff or members of the Class if they come into contact with any
19 electrical outlet, appliance or related item, as water flooding from the defective lines is
20 a conductor of electricity.

25 61. Plaintiff, through online and related research, has found that many
26 complaints concerning the problems and defects outlined herein have occurred across
27 the country, and in fact numerous insurance companies have filed suit against
28

1 Fluidmaster for their defective water supply lines in order to recover monies paid by
2 the insurance companies to various homeowners for flooding and related property
3 damage.
4

5 **V. CLASS ACTION ALLEGATIONS**

6 62. This action is brought and is properly maintained as a nationwide class
7 action pursuant to Fed. R. Civ. P. 23 on behalf of a class defined as follows:
8

9 All individuals and entities that own or have owned a Fluidmaster NO-
10 BURST Line; or who own or have owned homes or other structures
11 physically located in the United States, in which a Fluidmaster NO-
12 BURST Line is or was installed (the “Nationwide Class”). Excluded
13 from the Class is Fluidmaster, any entity in which Fluidmaster has a
controlling interest, and Fluidmaster’s legal representatives, assigns, and
successors.

14 63. Alternatively, or in addition to the Nationwide Class claims, Plaintiff
15 brings these claims under Fed. R. Civ. P. 23 on behalf of himself and on behalf of a
16 subclass of individuals and entities residing in California (“California Subclass”). The
17 California Subclass is defined as:
18

19 All individuals and entities in California that own or have owned
20 Fluidmaster a NO-BURST Line; or who own or have owned homes or
21 other structures physically located in California, in which a Fluidmaster
22 NO-BURST Line is or was installed. Excluded from the California
23 Subclass is Fluidmaster, any entity in which Fluidmaster has a controlling
interest, and Fluidmaster’s legal representatives, assigns, and successors.

24 64. The Nationwide Class and the California Subclass are collectively
25 referred to herein as the “Class.”
26

27 65. Plaintiff reserve the right to redefine the Nationwide Class and/or the
28

1 California Subclass prior to the certification of the Nationwide Class and/or the
2 California Subclass.
3

4 66. The Class is so numerous that individual joinder of all Class members is
5 impracticable. The actual number of Class members is unknown at this time, but
6 numbers in the thousands. The true number of Class members is likely to be known by
7 Fluidmaster and may be ascertained through its books and records, and through
8 discovery of its retailers and distributors.
9

10 67. There are numerous questions of law and fact that are common to
11 Plaintiff and the Class and that predominate over any questions that may affect
12 individual Class members, including, without limitation:
13

- 14 a. Whether Fluidmaster's water supply lines are defective;
15
- 16 b. Whether Fluidmaster's water supply lines suffer from common
17 design defects, as alleged herein;
- 18 c. Whether the design defects with respect to Fluidmaster's water
19 supply lines result in the water supply lines being prone to rupture, burst, break, and
20 resulting in failure to perform the task for which they were designed;
- 21 d. Whether Fluidmaster knew or should have known of the defects in
22 the water supply lines prior to putting them into the stream of commerce for purchase
23 by Plaintiff and the Class;
- 24 e. Whether Fluidmaster properly advised consumers about the
25 likelihood of the water supply lines' premature failure;
26

f. Whether Fluidmaster owed a duty to Plaintiff and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, warranting, and marketing of the water supply lines;

g. Whether Fluidmaster breached its duty to Plaintiff and the Class by designing, manufacturing, advertising, and selling to Plaintiff and the Class defective water supply lines;

h. Whether Fluidmaster breached its duty to Plaintiff and the Class by failing promptly to remove the defective water supply lines from the marketplace or take other remedial action;

- i. Whether the water supply lines fail to perform in accordance with the reasonable expectations of ordinary consumers;

j. Whether the water supply lines fail to perform as advertised, marketed and warranted;

k. Whether Fluidmaster breached its express warranties to Plaintiff and the Class by advertising, marketing and selling defective water supply lines to Plaintiff and the Class;

1. Whether Fluidmaster breached its implied warranties to Plaintiff and the Class by advertising, marketing and selling water supply lines that were not of a merchantable quality, nor fit for the ordinary purpose for which they were sold;

m. Whether Plaintiff and the Class members did not receive the benefit of their bargain in purchasing the water supply lines;

n. Whether Plaintiff and the Class are entitled to compensatory damages, and the amount of such damages for the replacement and remediation of the water supply lines;

- o. Whether Fluidmaster's representations regarding the suitability and exemplary nature of its water supply lines, and its omissions and concealment of facts to the contrary regarding the water supply lines' design defects constitute violations of state consumer protection laws;

p. Whether Fluidmaster continued to market and sell the defective water supply lines under the name “NO-BURST” when the manufacturer knew that the supply lines would spontaneously burst or break, causing damage to the property of consumers;

q. Whether Fluidmaster has been unjustly enriched by its conduct, as alleged herein:

r. Whether Fluidmaster should be required to notify all Class members about their defective water supply lines;

s. Whether Plaintiff and members of the Class are entitled to damages.

68. Plaintiff has the same interests in this matter as all Class members, and his claims are typical of all Class members. As a result of the uniform design defects inherent in the water supply lines' formulation, the water supply lines have failed and will continue to prematurely fail, causing Plaintiff and Class members to suffer

1 damages in the form of unreimbursed costs associated with replacing the water supply
2 lines and remediating flood damage.
3

4 69. Plaintiff will fairly and adequately represent the interests of the Class
5 members and does not have interests adverse to the Class. Plaintiff is committed to
6 pursuing this action and has retained competent counsel experienced in the
7 prosecution and successful resolution of consumer class actions. Plaintiff and his
8 counsel are committed to prosecuting this action vigorously on behalf of the Class,
9 and have the financial resources to do so.
10

11 70. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)
12 because the prosecution of separate actions by individual Class members would create
13 a risk of inconsistent or varying adjudications, which would establish incompatible
14 standards of conduct for Defendant, and/or because adjudications with respect to
15 individual Class members would, as a practical matter, be dispositive of the interests
16 of non-party Class members.
17

18 71. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
19 because Defendant has acted or refused to act on grounds generally applicable to the
20 Class, making appropriate both declaratory and injunctive relief with respect to the
21 Class as a whole. The members of the Class are entitled to injunctive relief as set
22 forth below.
23

24 72. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
25 because, as set forth above, questions of law and fact common to the Class
26

1 predominate over questions affecting only individual members of the Class, and
2 because a class action is superior to other available methods for the fair and efficient
3 adjudication of this litigation. Furthermore, the likelihood that individual members of
4 the Class will prosecute separate actions is remote given the extensive time and
5 considerable expense necessary to conduct such litigation, especially when compared
6 to the relatively modest amount of damages at issue for each individual Class member.
7
8 This action will be prosecuted in a manner to ensure the Court's able management of
9 this case as a class action, and Plaintiff knows of no difficulty that would be
10 encountered in the management of this litigation that would preclude its maintenance
11 as a class action.

14
VI. FRAUDULENT CONCEALMENT

15 73. At all relevant times, Fluidmaster affirmatively concealed from Plaintiff
16 and the Class the design defects inherent in the water supply lines.

18 74. Fluidmaster had a duty to inform Plaintiff and the Class of the defects,
19 about which Fluidmaster knew or should have known. Specifically, Fluidmaster has
20 known for years of the problems and defects outlined herein through various
21 complaint forums and as the result of numerous suits being filed against Fluidmaster
22 by various insurance companies. Notwithstanding their duty to inform Plaintiff and
23 Class members, Fluidmaster has never disclosed the defects to Plaintiff and the Class.
24 To the contrary, Fluidmaster has consistently maintained that its water supply lines are
25 “NO-BURST,” “tough,” “heavy-duty,” “NSF-approved,” “reinforced,” chlorine
26
27
28

1 resistant, designed for “high flow capacity” and having “high bursting strength.”

2 75. Plaintiff and the Class could not have discovered the defects or
3 Fluidmaster’s attempts to avoid disclosure of the defects alleged herein. Thus, the
4 running of the applicable statutes of limitation have been tolled with respect to any
5 claims that Plaintiff or the Class members have brought or could have brought as a
6 result of the unlawful or fraudulent course of conduct described herein.

7 76. In addition, Fluidmaster is estopped to plead the statute of limitations
8 because it failed to disclose facts that it was obligated to disclose concerning the
9 defects in the water supply lines. Fluidmaster actively concealed and misrepresented
10 to Plaintiff and the Class members facts that were essential to understanding that
11 Plaintiff and the Class members had claims against Fluidmaster, and Fluidmaster thus
12 acted to prevent Plaintiff and the Class members from learning that they possessed
13 claims against Defendant. Had Plaintiff and the Class members been aware of the
14 facts that Fluidmaster misrepresented and concealed, they would have commenced suit
15 against Fluidmaster before the running of any statute of limitations alleged to be
16 applicable to this case.

17 77. Fluidmaster is further estopped from asserting any statute of limitations
18 defense, contractual or otherwise, to the claims alleged herein by virtue of its
19 fraudulent concealment.

FIRST CAUSE OF ACTION

**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(CAL BUS & PROF CODE § 17200 ET SEQ.)
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**

78. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

79. Plaintiff brings this claim under the laws of California, because Fluidmaster's operations are headquartered in California and California has the most significant relationship to the issues and facts relevant to this claim, including being the locus of Fluidmaster's decisions concerning the design and marketing of the water supply lines. In the alternative, Plaintiff brings this claim on behalf of the California Subclass.

80. Plaintiff brings this cause of action on behalf of himself, and on behalf of the other Class members, against Fluidmaster for its unlawful, unfair, and/or deceptive business acts and practices pursuant to California's Unfair Competition Law (UCL), Business & Professions Code § 17200 et seq., which prohibits unlawful, unfair and/or fraudulent business acts and/or practices.

81. This claim is predicated on the duty to refrain from unlawful, unfair and deceptive business practices. Plaintiff and the Class members hereby seek to enforce a general proscription of unfair business practices and the requirement to refrain from deceptive conduct.

82. The UCL prohibits acts of “unfair competition.” As used in this section,

1 “unfair competition” encompasses three distinct types of misconduct: (a)
2 “unlawful...business acts or practices”; (b) “unfair fraudulent business acts or
3 practices”; and (c) “unfair, deceptive or misleading advertising.”
4

5 83. Defendant committed an unfair business act or practice in violation of the
6 UCL because Fluidmaster knew that its water supply lines contained defects and that
7 the instructions provided for installation and use were inadequate, contradictory, and
8 confusing. It further knew that Plaintiff and the Class members could not learn or
9 discover that the water supply lines were defective until the water supply lines failed.
10 Fluidmaster surreptitiously remediated the defects without warning consumers about
11 the potential for them to spontaneously fail and cause extensive property damage due
12 to flooding. Fluidmaster’s superior knowledge of the defects and the active
13 concealment created a legal duty to disclose them.
14

15 84. As alleged in this complaint, Fluidmaster failed to disclose that the NO-
16 BURST water supply lines are defectively designed and produced using a grade of
17 stainless steel, which is known to corrode and fracture, and that the NO-BURST water
18 supply lines are substantially certain to fail when used for their intended purpose due
19 to Fluidmaster’s choice of materials. The stainless steel braiding has an unreasonably
20 high likelihood of corroding and failing when subjected to common household
21 chemicals that are reasonably and foreseeably used and stored near the water supply
22 lines.
23

24 85. Also as alleged in this complaint, Fluidmaster failed to disclose that the
25

1 design of the Fluidmaster NO-BURST water supply lines include low pressure inner
2 tubing which is substantially certain to fail when used for its intended purpose due to
3 Fluidmaster's choice of materials. This inner tubing has an unreasonably high
4 likelihood of bursting when the stainless steel braiding covering the tubing fails.

5
6 86. Because the injuries alleged occurred without Plaintiff's and the other
7 Class members' knowledge, Plaintiff and the Class members could not have avoided
8 such injuries. One cannot avoid something about which one is unaware. Accordingly,
9 Fluidmaster has violated the "unfairness" prong of the UCL.

10
11 87. Plaintiff would not have purchased the Fluidmaster water supply lines,
12 had them installed, or otherwise exposed his real and personal property to catastrophic
13 flooding, had Fluidmaster disclosed the propensity for its water supply lines to
14 spontaneously fail or that remediated supply lines were available to replace the
15 defective ones.

16
17 88. As a result of Fluidmaster's violation of the UCL, Plaintiff and the Class
18 members have suffered injury-in-fact and lost money or property in the amounts paid
19 for the water supply lines; amounts paid to remediate property damage stemming from
20 the defective water supply lines; and amounts paid to replace the defective water
21 supply lines.

22
23 89. Plaintiff, on behalf of himself and for all other similarly situated persons,
24 demands judgment against Fluidmaster and demand declaratory, equitable, and/or
25 injunctive relief requiring Fluidmaster to stop their unlawful, deceptive, and unfair

1 conduct, prohibiting Fluidmaster from continuing to sell the defective water supply
2 lines; requiring notice to the public at-large of the design defects associated with these
3 water supply lines and of the availability of a remediated product, and all other relief
4 the Court deems just and equitable.

5 **SECOND CAUSE OF ACTION**

6 **UNJUST ENRICHMENT**
7 **ON BEHALF OF THE CLASS, OR ALTERNATIVELY**
8 **THE CALIFORNIA SUBCLASS**

9 90. Plaintiff repeats and realleges the allegations of each of the preceding
10 paragraphs as if fully set forth herein and assert this claim in the alternative to any
11 warranty claims brought on behalf of the Class or California Subclass.

12 91. Plaintiff and the Class conferred substantial benefits on Fluidmaster by
13 purchasing the defective water supply lines. Fluidmaster knowingly and willingly
14 accepted and enjoyed those benefits.

15 92. Fluidmaster knew or should have known that Plaintiff and the Class paid
16 for the water supply lines with the expectation that they would perform as represented.

17 93. Fluidmaster's retention of these benefits is inequitable.

18 94. Plaintiff and the Class are entitled to recover from Fluidmaster all
19 amounts wrongfully collected and improperly retained by Fluidmaster, plus interest.

20 95. As a direct and proximate cause of Fluidmaster's wrongful conduct and
21 unjust enrichment, Plaintiff and the Class are entitled to an accounting, restitution,
22 attorneys' fees, costs, and interest.

THIRD CAUSE OF ACTION

**NEGLIGENCE
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**

96. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

97. Fluidmaster was negligent in that it failed to use reasonable care when it designed, created, manufactured, assembled, labeled, tested, distributed and sold its water supply lines.

98. As the manufacturer and/or seller of a consumer product, Fluidmaster owed a duty to Plaintiff and the Class to provide safe and quality products, and a duty to provide products that would perform as intended and expected. Fluidmaster also owed a duty to Plaintiff and the Class to provide adequate instructions and warnings for proper and safe use of the products. Fluidmaster further owed a duty to provide Plaintiff and the Class with information related to the water supply lines' reasonable expected life span and information related to their maintenance and replacement. Fluidmaster owed a duty to disclose the defects that it knew existed, yet failed to do so to the detriment of the Class.

99. Fluidmaster breached each of these duties.

100. As a direct and proximate result of Fluidmaster's negligence, lack of care and other wrongful acts, Plaintiff and the Class members have incurred damages in an amount to be determined at trial.

101. As a result of Fluidmaster's negligence, Plaintiff and Class members have suffered economic losses for the damages for inadequate value, cost of repair and replacement of their defective water supply lines, as well as damage to other personal property which resulted from the sudden and dangerous failure of the water supply lines.

102. The Plaintiff's and Class members' damages were proximately caused by Fluidmaster's false representations regarding the water supply lines' durability, even after Fluidmaster knew that the defects were causing the water supply lines to burst and/or break.

103. The damages suffered by the Plaintiff and Class members were proximately caused by a negligent misrepresentation made by Fluidmaster, a corporation which is in the business of supplying information for the guidance of consumers and actively holds itself out to be “the #1 selling brand of toilet repair products in the world. . . [and] at the forefront of the toilet care market by providing innovative, yet easy-to-use products that are of the highest quality.”

FOURTH CAUSE OF ACTION

**STRICT LIABILITY -- DESIGN DEFECT AND FAILURE TO WARN
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**

104. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

105. Fluidmaster designed, manufactured, sold, and/or distributed defective

1 water supply lines to Plaintiff and the Class.

2 106. The water supply lines that Fluidmaster designed, manufactured, sold
3 and/or distributed were defective in their design, and were defective when they left
4 Fluidmaster's control.

5 107. Fluidmaster knew, or should have known, that the water supply lines
6 contained a non-obvious danger in their material composition. Fluidmaster knew that
7 the water supply lines were highly susceptible to failure under expected installation
8 conditions, and that consumers would not repeatedly replace their water supply lines
9 without an instruction to do so.

10 108. Fluidmaster knew that Plaintiff and the Class would use the water supply
11 lines without first inspecting their durability. Fluidmaster failed to inform Plaintiff
12 and the Class as to the water supply lines' susceptibility to sudden catastrophic failure.
13 Fluidmaster failed to warn consumers that it was necessary to periodically inspect and
14 replace the water supply lines, even if the lines had not yet failed or even if the lines
15 were still within the warranty period measured after the consumer's date of purchase
16 of the water supply line.

17 109. The water supply lines were defective due to inadequate warnings and
18 inadequate inspection and testing, and inadequate reporting regarding the results of
19 quality control testing and safety inspections, or lack thereof.

20 110. Had Plaintiff and the Class been adequately warned concerning the
21 likelihood that the water supply lines would fail, they would have taken steps to avoid
22

damages by replacing the water supply lines or by not purchasing them.

111. Fluidmaster, after learning that its NO-BURST water supply lines could suddenly burst, had a post-sale duty to warn consumers of the possibility that catastrophic failure and flooding could result from the failure of its water supply lines, even when used for their intended purpose.

112. As a direct and proximate result of the defective condition of the water supply lines, Plaintiff and the Class members have incurred damages to both their supply lines and to their adjacent personal and real property in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

**NEGLIGENCE FAILURE TO WARN
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**

113. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

114. Fluidmaster manufactured, designed, sold and/or distributed defective water supply lines to Plaintiff and the Class that were defective from the time that the water supply lines were manufactured.

115. Fluidmaster knew or reasonably should have known that its water supply lines were defective and dangerous and/or were likely to be dangerous when used in a reasonably foreseeable and expected manner.

116. Fluidmaster knew or reasonably should have known that Plaintiff and the

1 Class would not realize that their water supply lines were defective and posed a danger
2 of causing substantial property damage, both to the product itself and the adjacent real
3 and personal property of Plaintiff and the Class.
4

5 117. Fluidmaster failed to adequately warn of the danger or instruct Plaintiff
6 and the Class on the safe use of the water supply lines, and further, failed to warn
7 Plaintiff and the Class of the risks associated with signs of corrosion of the braided
8 steel or minute fractures of the coupling nut.
9

10 118. A reasonable manufacturer, distributor, assembler, or seller under the
11 same or similar circumstances would have warned of the dangers or instructed on the
12 safe use of the product, including, without limitation, by providing detailed installation
13 and maintenance instructions together with warnings to periodically inspect and/or
14 replace the water supply lines.
15
16

17 119. As a direct and proximate result of the defective condition of the water
18 supply lines Plaintiff and the Class members have incurred damages in an amount to
19 be determined at trial.
20

21 120. Fluidmaster, after learning that its water supply lines could suddenly
22 burst and/or their coupling nut could fracture and break, had a post-sale duty to warn
23 consumers of the possibility that catastrophic failure and flooding could result from
24 the failure of its water supply lines, even when used for their intended purpose.
25
26

27 121. Fluidmaster's negligent failure to warn or instruct Plaintiff and the Class
28 was a substantial factor in causing the harm to Plaintiff and the Class, placing their

safety and personal property at risk.

SIXTH CAUSE OF ACTION

**DECLARATORY JUDGMENT ACT, 28 U.S.C. § 2201, ET SEQ.
AND FED. R. CIV. P. 57 ON BEHALF OF THE CLASS**

122. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

123. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2751 (3d ed. 1998).

124. There is an actual controversy between Fluidmaster and Plaintiff concerning:

a. whether the water supply lines are defectively designed thus causing them to fail;

b whether Fluidmaster knew or should have known of the defects;

c. whether Fluidmaster failed to warn against the potential unsuitability of its defectively designed water supply lines; and

e. whether Fluidmaster knowingly attempted to remediate the defects in its water supply lines before Plaintiff sustained any damage and without providing notice to Plaintiff and the Class about the defects.

125. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal
relations of any interested party seeking such declaration, whether or not further relief
is or could be sought.”

126. Despite the repeated failures of its water supply lines, Fluidmaster refuses to publicly acknowledge that these products have design flaws that cause them to fail. Fluidmaster attempted to remediate these design flaws without advising consumers of the defects.

127. Accordingly, based on Fluidmaster's failure to act, Plaintiff seeks a declaration that the water supply lines are defective in their design, workmanship, material choices, and labeling, as alleged herein. The defective nature of the water supply lines is material and requires disclosure to all persons who own them.

128. The declaratory relief requested herein will generate common answers that will settle the controversy related to the alleged defective design and labeling of the water supply lines and the reasons for their repeated failure. There is an economy to resolving these issues as they have the potential to eliminate the need for continued and repeated litigation.

SEVENTH CAUSE OF ACTION

**FRAUD BY CONCEALMENT
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**

129. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

130. Fluidmaster had a duty to disclose the safety, quality, dependability, and reliability issues associated with its water supply lines because Fluidmaster

1 consistently marketed the water supply lines as safe, "heavy duty," durable, and "no
2 burst."
3

4 131. Once Fluidmaster made representations to the public about the safety,
5 quality, dependability, and reliability of its water supply lines, Fluidmaster was under
6 a duty to disclose these omitted facts, because where one does speak one must speak
7 the whole truth and not conceal any facts that materially qualify those facts stated. A
8 manufacturer that volunteers information about its product must be truthful, and the
9 telling of a half-truth calculated to deceive is fraud.
10

11 132. Upon information and belief, in or around 2003 when Fluidmaster
12 changed the design of its NO-BURST Lines to incorporate inner tubing with a higher
13 pressure rating, Fluidmaster concealed the defect of the earlier design from consumers
14 including Plaintiff and the Class.
15

16 133. When it remedied some of the defects of its water supply lines,
17 Fluidmaster failed to publicize the fact that the NO-BURST water supply lines (which
18 continued to be sold within its distribution networks) were known to burst.
19 Fluidmaster also did not recall the defectively designed water supply lines, nor did
20 Fluidmaster notify property owners that the defective water supply lines could
21 spontaneously fail and should be replaced.
22

23 134. In addition, Fluidmaster had a duty to disclose these omitted material
24 facts because they were known and/or accessible only to Fluidmaster, which has
25
26

1 superior knowledge and access to the facts, and Fluidmaster knew they were not
2 known to or reasonably discoverable by Plaintiff and the Class.
3

4 135. These omitted facts were material because they directly impact the safety,
5 quality, and reliability of Fluidmaster's water supply lines. Whether a water supply
6 line is a quality and reliable product that has been manufactured and designed
7 according to industry standards are material facts for a reasonable consumer.
8 Fluidmaster possessed exclusive knowledge of the defects and quality control issues
9 rendering the water supply lines inherently more dangerous and less reliable than
10 similar plumbing lines.
11

12 136. Fluidmaster actively concealed and/or suppressed these material facts, in
13 whole or in part, with the intent to induce Plaintiff and the Class to purchase its water
14 supply lines at a higher price for the NO-BURST water supply lines, which did not
15 match the water supply lines' true value.
16

17 137. Fluidmaster still has not made full and adequate disclosure and continues
18 to defraud Plaintiff and the Class.
19

20 138. Plaintiff and the Class were unaware of the omitted material facts and
21 would not have acted as they did if they had known of the concealed and/or
22 suppressed facts. Plaintiff's and the Class' actions were justified.
23

24 139. Fluidmaster was in exclusive control of the material facts, and such facts
25 were not known to Plaintiff or the Class.
26

140. As a result of the concealment and/or suppression of the facts, Plaintiff and the Class sustained damage. Those Class members who want to rescind their purchase are entitled to restitution and consequential damages to their physical and personal property which arose from the sales transaction.

141. Fluidmaster's acts were done maliciously, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the Class' rights and well-being.

142. Fluidmaster's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, and Plaintiff, individually and on behalf of the Class, reserves the right to assert a claim for punitive damages.

EIGHTH CAUSE OF ACTION

COMMON LAW BREACH OF EXPRESS WARRANTY ON BEHALF OF THE CLASS, OR ALTERNATIVELY THE CALIFORNIA SUBCLASS

143. Plaintiff repeats and realleges the allegations of each of the preceding paragraphs as if fully set forth herein.

144. As fully pled above, Fluidmaster had knowledge of the defects to its water supply lines and that these lines pose a serious safety risk to consumers like Plaintiff and Class members.

145. Fluidmaster expressly represented and warranted to Plaintiff and Class members by and through oral and written statements, descriptions, and affirmations of fact through its website, print advertising, marketing materials, and even the name “NO-BURST” prominently on many of its products, that the of its water supply lines

were safe and fit for their intended purposes.

146. Fluidmaster expressly represented and warranted the quality of the water supply lines against defects in materials and workmanship for a period of either ten or five years (depending on the date of purchase of the water supply line), promising to "replace any part of this plumbing product which proves to be defective in workmanship or materials under normal use for ten [or alternately five] years from the date of purchase."

147. Fluidmaster publicized these statements to consumers and was aware that consumers would reasonably rely on these warranties related to the quality and workmanship of the water supply lines using statements like “Fluidmaster is quick to market, quick to manufacture and quick to deliver with *unparalleled quality assurance*” (emphasis added).

148. These express warranties were unavoidably material to Plaintiff and the Class members who would have chosen to purchase a different product if they had prior knowledge that a sudden failure of the water supply line would result in damage to the line itself as well as surrounding personal property of Plaintiff and the Class members.

149. Plaintiff and the Class members reasonably relied on these express warranties when they chose to purchase Fluidmaster's water supply lines.

150. At the time that Fluidmaster made these express warranties, it knew the use for which the water supply lines were intended, and Fluidmaster expressly

1 warranted that the lines were fit and safe for their intended purpose.

2 151. At the time that Fluidmaster made these express warranties, it knew of
3 the latent defects in materials and workmanship inherent in the water supply lines, but
4 continued to market the water supply lines by means of false and misleading
5 information, including that the lines would last ten years (or alternately five years)
6 without acknowledging or warning consumers of their actual design defects.
7

9 152. The water supply lines purchased by Plaintiff and the Class members did
10 not conform to Fluidmaster's promises and descriptions in that:

12 a. The design of the Fluidmaster NO-BURST water supply lines are
13 produced using a grade of stainless steel which is known to corrode and fracture,
14 which is substantially certain to fail when used for its intended purpose due to
15 Fluidmaster's choice of materials. The stainless steel braiding has an unreasonably
16 high likelihood of corroding and failing when subjected to common household
17 chemicals that are reasonably and foreseeably used and stored near the water supply
18 lines.
19

21 b. The design of the Fluidmaster NO-BURST water supply lines
22 include low pressure inner tubing which is substantially certain to fail when used for
23 its intended purpose due to Fluidmaster's choice of materials. This inner tubing has an
24 unreasonably high likelihood of bursting when the stainless steel braiding covering the
25 tubing fails.
26

28 153. Plaintiff and the Class members have incurred damages including but not

1 limited to the destruction of their supply line, water damage to their homes, and
2 destruction of their personal property, as described herein, as a direct and proximate
3 result of Fluidmaster's breach of its express warranty.
4

5 **NINTH CAUSE OF ACTION**

6 **BREACH OF EXPRESS WARRANTY**
7 **ON BEHALF OF THE CLASS, OR ALTERNATIVELY**
THE CALIFORNIA SUBCLASS

8 154. Plaintiff repeats and realleges the allegations of each of the preceding
9 paragraphs as if fully set forth herein.
10

11 155. Fluidmaster is a seller of the water supply lines.

12 156. The water supply lines are goods.

13 157. As set forth herein, Fluidmaster had knowledge of the defective design of
14 its water supply lines and that they posed a serious risk to consumers including
15 Plaintiff and the Class.
16

17 158. Despite its knowledge, Fluidmaster expressly warranted in writing that it
18 would replace defective parts. See Fluidmaster's Warranty located at
19 <http://www.fluidmaster.com/index.asp?bhcp=1>.
20

21 159. In selling its water supply lines, Fluidmaster expressly warranted in
22 writing that it would repair and adjust to correct defects in materials and workmanship
23 of any part supplied by Fluidmaster. In fact, Fluidmaster has not repaired or adjusted
24 the water supply lines, and nor can it, given the fact that they are defective in their
25 design.
26
27

1 160. These warranties were made not only in Fluidmaster's written agreement
2 to customers but also in advertisements and in uniform statements provided by
3 Fluidmaster.
4

5 161. These warranties, affirmations and promises were part of the basis of the
6 bargain between Fluidmaster and Plaintiff and the Class, who relied on the existence
7 of the express warranties.
8

9 162. By selling water supply lines containing the defects to consumers like
10 Plaintiff and the Class after it had knowledge of the defects, Fluidmaster breached its
11 express warranty to provide water supply lines that were free from defects.
12

13 163. Fluidmaster also breached its express warranty to repair and correct
14 material defects or component malfunctions in its water supply lines when it failed to
15 do so despite its knowledge of the defects and despite its knowledge of alternative
16 designs and materials.
17

18 164. Further, any "repairs" offered by Fluidmaster do not and cannot remedy
19 the problems with its water supply lines because of the design defects.
20

21 165. The warranty of repair to the water supply lines fails in its essential
22 purpose because the contractual remedy is insufficient to make Plaintiff and the Class
23 whole and because Fluidmaster has refused to provide the promised remedies within a
24 reasonable time.
25

26 166. Also, as alleged herein, at the time Fluidmaster warranted and sold the
27 water supply lines, it knew the supply lines did not conform to the warranties and were
28

1 inherently defective, and Fluidmaster wrongfully and fraudulently misrepresented
2 and/or concealed material facts.
3

4 167. Accordingly, Plaintiff and the Class are not limited to the limited
5 warranty of “repair” and Plaintiff and the Class seek all remedies allowed by law.
6

7 168. As detailed above, Fluidmaster was notified of Plaintiff’s water supply
8 lines defects but failed to provide defect-free supply lines to Plaintiff free of charge or
9 to provide an adequate retrofit to remedy the defects.
10

11 169. As detailed above, Fluidmaster was provided with notice and has been on
12 notice of the defects and of its breach of express written warranties through consumer
13 warranty claims reporting problems with the water supply lines, customer complaints,
14 and its own internal and external testing, but has failed to repair, replace or retrofit the
15 water supply lines to ensure that they were free of materials defects or component
16 malfunctions as Fluidmaster promised.
17

18 170. As a direct and proximate result of Fluidmaster’s breach of its express
19 warranties, Plaintiff and the Class have incurred damages in an amount to be
20 determined at trial.
21

22 **TENTH CAUSE OF ACTION**
23

24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
ON BEHALF OF THE CLASS, OR ALTERNATIVELY
THE CALIFORNIA SUBCLASS**
25

26 171. Plaintiff repeats and realleges the allegations of each of the preceding
27 paragraphs as if fully set forth herein.
28

1 172. Fluidmaster is a merchant with respect to the water supply lines.

2 173. The water supply lines are goods.

3 174. Fluidmaster's implied warranty of merchantability accompanied the sale
4 of the water supply lines to Plaintiff and the Class.

5 175. Fluidmaster warranted that the water supply lines were fit for ordinary
6 use.

7 176. The materials, design and repeated failure of the water supply lines made
8 them defective and unfit for the ordinary purposes for which they are used. The water
9 supply lines are not fit for ordinary use.

10 177. Any effort by Fluidmaster to disclaim or limit its responsibility for its
11 defective water supply lines would be unconscionable under the circumstances,
12 including because Fluidmaster knew its water supply lines were unfit for normal use.
13 Through its conduct, Fluidmaster breached its implied warranty of merchantability and
14 is liable to Plaintiff and the Class.

15 178. Plaintiff and the Class have provided notice to Fluidmaster regarding the
16 problems they experienced with the water supply lines and, notwithstanding such
17 notice, Fluidmaster failed and refused to remedy the problems. Further, Fluidmaster
18 had actual knowledge of the defects alleged herein.

19 179. As a result of Fluidmaster's breach of the implied warranty of
20 merchantability, Plaintiff and the Class members have incurred damages in an amount
21 to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief, individually and on behalf of the Class:

a. an Order certifying the Class and appointing Plaintiff as the Class Representative, and appointing Berger & Montague and Saltz, Mongeluzzi, Barrett & Bendesky as lead class counsel;

b. an award for equitable and injunctive relief enjoining Fluidmaster from continuing to pursue the policies, acts and practices described in this Complaint;

c. an award of damages and enhanced damages under statutory and common law as alleged in this Complaint, in an amount to be determined at trial;

d. an award of pre-judgment and post-judgment interest at the maximum rate allowable by law;

- e. an award of reasonable attorneys' fees and reimbursement of costs incurred by Plaintiff and Plaintiff's counsel in connection with this action; and

f such other and further relief as the Court deems just and proper

JURY DEMAND

Plaintiff demands a trial by jury on all claims set forth above.

1 Dated: December 30, 2015

Respectfully submitted,

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3 **HAGENS BERMAN SOBOL SHAPIRO**
4 **LLP**

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